contributory negligence against him. In our opinion, this they failed to do.

In our judgment, on the evidence in this case, the trial judge was not justified in drawing the inference that the appellant was guilty of contributory negligence. Accordingly the appeal is allowed. There will be judgment for the appellant against the respondents in the sum of $53,614 and costs of this appeal as taxed.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Ong & Chellam.*

M.M. SMITH v. GOLDHILL PROPERTIES (PTE) LTD.

[O.C.J. (Chua J.) February 28, 1978]
[Singapore — Civil Suit No. 2485 of 1975]

Revenue Law — Property tax payable by owner — Property tax deposit paid to developers by purchaser — Subsequent payment by purchaser to Comptroller — Whether purchaser entitled to refund of deposit from developers — Property Tax Act (Cap. 144), ss. 6(2) & (3), & 17(1).

Housing Developers, — Property tax — Whether developers entitled to retain purchaser's property tax deposit — Payment of property tax already made by purchaser to Comptroller — Property Tax Act (Cap. 144), ss. 6(2) & (3), & 17(1).

The plaintiff in this case had purchased three premises from the defendants. There were three written agreements relating to the sale and it was an express term of the said agreements that the plaintiff would bear and pay all property taxes for the account of the three premises from the date of possession by the plaintiff of the said premises. The plaintiff paid $7,500 to the defendants as property tax deposit for the three premises and took possession of the said premises. Subsequently, on receipt of three Notices from the Comptroller of Property Tax addressed to the plaintiff, the plaintiff paid the property tax for the three premises amounting to $51,993.30. Thereafter the plaintiff made a written demand to the defendants for the refund of the deposit of $7,500. Despite reminders, the defendants had failed to refund the said deposit.

Held: the plaintiff as owner of the premises was entitled to the refund of the deposits against the property tax which were payable by the plaintiff and not the defendants.

CIVIL SUIT.

A.P. Godwin for the plaintiff.

Wong Peng Koon for the defendants.

Cur. Adv. Vult.

Chua J.: The defendants, Goldhill Properties (Pte) Ltd., were the developers of the office and shopping complex known as Goldhill Plaza at Thomson Road/Newton Road, Singapore.

By an agreement in writing made on March 26, 1971, and two separate agreements both made on December 13, 1971, between the plaintiff, Margaret McKenzie Smith, on the one part and the defendants of the other part, (the said agreements) premises provisionally known as Private Lot Nos. 9A, 10A and 11A, First Floor, Block A, of Goldhill Plaza, (the said three premises) were sold by the defendants to the plaintiff. The said three premises were subsequently renumbered as follows: —

(a) 9A became 19A, Goldhill Plaza;
(b) 10A became 21A, Goldhill Plaza;
(c) 11A became 23A, Goldhill Plaza.

It was an express term of the said agreements that the plaintiff would bear and pay all property taxes for the account of the said three premises from the date of possession by the plaintiff of the said three premises henceforth.

By two letters both dated October 26, 1973, to the plaintiff, the defendants intimated that they would only hand over the set of keys of the said three premises (before the date of completion) to the plaintiff on payment by the plaintiff of, *inter alia*, the sum of $2,500 property tax deposit for each of the said three premises.

On November 12, 1973, the plaintiff signed three identical documents in respect of the said three premises prepared by the defendants and presented to the plaintiff to sign. Paragraph 4 of the documents provided that

"4. In consideration of your giving me/us possession of the said property now I/we hereby agree: —

(a) To bear and pay for from the date the keys are made available to me/us all property tax and assessments in respect of the said property or the relevant apportioned amount thereof if such, property tax or assessments are not separately assessed on the said property but in respect of property of which the said property forms part or on the land on which the said property has been built;

(b) ....

(c) I/We also agree to pay you now $2,500/- per unit for deposit against property tax or assessments which are payable by me/us or any arrears thereof; therefore the total deposit to be paid now by me for one unit is $2,500/-.

(d) ....

(e) ....

(f) ...."

The plaintiff paid $7,500 to the defendants as such property tax deposit for the said three premises and took possession of the said three premises on November 12, 1973.

On or about April 15, 1975, the plaintiff, instead of the defendants, received three Notices from the Comptroller of Property Tax addressed to the plaintiff, under the provisions of the Property Tax Act (Cap. 144) (the Act) for payment of property tax for all the said three premises for the period May 31, 1972, to June 30, 1975, totalling $51,993.30. The plaintiff paid the property tax.

On May 14, 1975, the plaintiff through her solicitors wrote to the defendants' solicitors requesting the repayment of the deposit of $7,500. Despite reminders the defendants have failed to refund to the plaintiff the said sum of $7,500 and the plaintiff commenced the present proceedings claiming the refund of the $7,500 and interest.

The contention of the plaintiff is that as soon as the Comptroller of Property Tax had made the assessment and requested the plaintiff to make payment the plaintiff is entitled to get a refund of the deposits for property tax from the defendants.

The contention of the defendants is that the deposits should only be refunded when the defendants cease to be liable to the Comptroller in any way.

The argument of counsel for the defendants is this. Section 17(1) of the Act provides that whenever any estate or interest in any house, building, land or

tenement included, or capable of being included, in a Valuation List is sold or transferred the vendor or transferor shall within one month after such sale or transfer give notice thereof to the Chief Assessor. Section 43 of the Act provides that every person who sells or transfers any taxable property shall continue to be liable for the payment of all taxes payable in respect of such property before the notice under section 17(1) has been given. The notice of transfer under section 17(1) has not been given in the present case and consequently the defendants are still liable to pay the property tax of the said three premises.

The defendants say that the notice under section 17(1) has not been given for the simple reason that the title to the property cannot as yet be transferred as the subsidiary strata title certificates are not yet available. The notice under section 17(1) can only be given when the sale is completed.

I am unable to agree with the submission of counsel for the defendants.

By section 6(2) of the Act the property tax is payable half-yearly in advance by the owner of the property.

By section 2 "owner" "means the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if such premises were let to a tenant and includes the person whose name is entered in the Valuation List." In my view the plaintiff in this case comes within this definition. She has been treated by the Comptroller as the owner; she has been asked by the Comptroller to pay the property tax and she has paid the property tax since 1975. The Comptroller is now looking to the plaintiff for the payment of the property tax in respect of the said three premises. By section 6(3) the property tax is a first charge on the property and if the plaintiff fails to pay the property tax the Comptroller can seize the said three premises and sell them (section 35).

It is to be noted that by paragraph 4(c) of the letter of November 12, 1973, signed by the plaintiff at the request of the defendants, the plaintiff agreed to pay to the defendants the deposits against the property tax which are payable by the plaintiff and not the defendants.

It is clear that the said three premises had been sold to the plaintiff and the defendants should have given the notice under section 17(1). The defendants have refrained from giving the said notice and now say that they can keep the deposits.

In my view the plaintiff is entitled to the refund of the $7,500 deposit.

There will be judgment for the plaintiff in the sum of $7,500 and interest at the rate of 10 percent per annum from May 21, 1975, to date of payment and costs.

Claim allowed.

Solicitors: *Donaldson & Burkinshaw; Shook Lin & Bok.*

WEE BIAN HOCK v. KEPPEL SHIPYARD (PTE) LTD.

[O.C.J. (Rajah J.) April 20, 1978]

[Singapore — Suit No. 516 of 1973]

Labour Law — Factories — Injury from circular saw — Machinery not securely fenced — Inadvertent or careless acts of worker — Whether amounting to contributory negligence — Factories Act, 1973, s. 22(1).

Torts — Negligence — Inadvertent or careless worker — Whether amounting to contributory negligence.

Factories — Machinery not securely fenced — Factories Act, 1973, s. 22(1).

Machinery — Not securely fenced — Factories Act, 1973, s. 22(1).

In this case the plaintiff had been injured while operating a circular saw known as a rib-saw machine to cut strips of formica. A movable guard was provided for the saw, but the particular operation could not have been done with the guard in its safe down position. The plaintiff did the operation without the guard being in its safe down position and used his hands to exert pressure to keep the strip in position. While so doing his right hand slipped on the formica strip and he sustained injuries for which he claimed damages.

Held: (1) on the evidence it was clear beyond doubt that the defendants were in breach of their statutory duty under section 22(1) of the Factories Act in that they had not securely fenced the power-driven saw of the rib saw machine;

(2) the defendants had failed to prove contributory negligence on the part of the plaintiff. Inadvertent or careless acts and excusable lapses on the part of the factory worker would not amount to contributory negligence.

Cases referred to:

(1) *Ong Beng How* v. *Guan Seng Sawmill Company (Private) Limited* [1979] 1 M.L.J. 8.

(2) *Caswell* v. *Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 152.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.

C. Lau for the defendants.

Cur. Adv. Vult.

Rajah J.: In this case the plaintiff's claim was for damages for personal injuries and consequential loss suffered by him and caused during the course of his employment by the defendants as a Trainee Carpenter at the defendants' worksite at Keppel Harbour, Singapore, on or about the 31st day of July, 1972, by the negligence of the defendants, their servants or agents and/or by breach by the defendants of their duty to the plaintiff as employers of the plaintiff to take reasonable care for the safety of the plaintiff as their servant and/or by breach by the defendants of statutory duty under the Factories Act, 1973 (the Act).

At the outset of the trial the plaintiff abandoned his claim for special damages and it was agreed between the parties that on the basis of full liability general damages be fixed at $22,500. During the trial the defendants conceded that (i) the accident took place within a factory within the meaning of the Act of which the defendants were the occupiers at the time and (ii) the saw blade is a dangerous part within the meaning of section 22(1) of the Act.

The plaintiff was employed as a Trainee Carpenter at the defendants' premises at Keppel Harbour and while so employed he operated with another trainee a circular saw, known as a Rib Saw Machine, which was part of the defendants' equipment therein.